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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Authorization for Use and Disclosure of Protected Health Information (PHI)

Authorizing Source: 45 CFR 164.508 (HIPAA); 42 CFR Part 2 (Substance Use Disorder Information); RCW 70.02

Approved by: Executive Director Date: 08/11/2020 Signature:

POLICY # 2521.00

SUBJECT: AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)

PURPOSE

In compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Part 2, Washington law and any applicable Business Associate Agreements (BAAs) with Upstream Covered Entities, this policy sets out a process to promote and protect the right to authorize the Use and Disclosure of Protected Health Information (PHI) by or on behalf of Individuals.

Capitalized terms have specific meanings. Definitions under this policy include Authorized Representative, Business Associate Agreements (BAA), Designated Record Set, Disclose, Individual, Mental Health Information, Part 2 Information, Protected Health Information (PHI), Psychotherapy Notes, Required by Law, Sexually Transmitted Disease (STD), Upstream Covered Entity Use, and Workforce. See Policy 2502.00: Definitions for Policies Governing PHI.

Important Note about Authorization versus Access. This policy is limited to authorizations for Use and Disclosure of PHI. It does not apply to requests for access to PHI by an Individual or Authorized Representative under an Individual’s Right of Access. See Policy 2514.00: Right to Access PHI.

If an Individual or Authorized Representative (rather than a third-party who has obtained an Individual or Authorized Representative’s signature) requests North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO) to send a copy of PHI (that does not include Part 2 Information) to a third-party, then the request shall be treated as a request for access and shall fall under Policy 2514.00: Right to Access PHI. This includes a request that originates from an Individual or Authorized Representative but is forwarded by a third-party at the Individual’s or Authorized Representative’s direction. Consult with the Privacy Officer with any questions, including whether a request should be treated as coming from a third-party or as coming from the Individual or Authorized Representative. A request for access for North Sound BH-ASO to send a copy of PHI that includes Part 2 Information to a third-party requires an authorization that complies with Part 2 and will fall under this policy.

POLICY

North Sound BH-ASO will Disclose PHI about an Individual in response to a valid authorization (also referred to as a consent, release of information or ROI) from the Individual or the Individual’s Authorized Representative, subject to any legal exceptions. To the extent consistent with any applicable Business Associate Agreement (BAA) with an Upstream Covered Entity, North Sound BH-ASO will obtain a valid authorization (or ROI) from the Individual or the Individual’s Authorized Representative when a Use or Disclosure of PHI is not otherwise permitted or required under HIPAA and other applicable law.

PROCEDURE

1. **Authorization for Use or Disclosure of PHI.** An Individual or an Authorized Representative of the Individual may provide an authorization for the Use or Disclosure of PHI about the Individual. North Sound BH-ASO, through its Privacy Officer, will comply with valid authorizations, subject to any legal exceptions. To the extent consistent with any applicable BAA with an Upstream Covered Entity, North Sound BH-ASO may seek an authorization for the Use or Disclosure of PHI from the Individual or the Individual's Authorized Representative.
2. **Need for Authorization.** Generally, written authorization is required for any Use or Disclosure of PHI that:
 - 2.1 **Is not otherwise Required by Law or permitted by law.** See Policy 2522.00: Use and Disclosure of PHI;
 - 2.2 Consists of **Psychotherapy Notes**. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Psychotherapy Notes);
 - 2.3 Is for **Marketing**. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Marketing) and Policy 2508.00: Marketing;
 - 2.4 Is for the **Sale of PHI**. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Sale of PHI) and Policy 2523.00: Sale of PHI;
 - 2.5 Is for most **Research** purposes (subject to certain exceptions). See Policy 2502.00: Definitions for Policies Governing PHI (definition of Research) and Policy 2513.00: Research; and
 - 2.6 Involves **Part 2 Information** relating to certain substance use disorder (SUD) information. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Part 2 Information). **Note:** Generally, an authorization should not be required in response to a request for access to PHI by an Individual or Authorized Representative, except when the request involves forwarding Part 2 Information to a third-party. See Policy 2514.00: Right to Access PHI.
3. **Valid Authorization.**
 - 3.1 **Written Authorizations Only.** An authorization for the Use or Disclosure of PHI must be in writing, unless otherwise Required by Law or permitted by law.
 - 3.2 **North Sound BH-ASO Forms.** North Sound BH-ASO prefers the Use of one of its forms but will accept any written requests that comply with Section 3.3 of this policy. North Sound BH-ASO's "Authorization, Consent and Release for Use and Disclosure of Health Information (General)" may be used in most situations. **NOTE:** When the information to be Disclosed under an authorization is Part 2 Information and the recipient is an entity that is not a Health Care Provider, a Health Plan or a natural person, such as a health information exchange, a Research institution or an accountable care organization, the other authorization form, "Authorization, Consent and Release for Use and Disclosure of Health Information (Recipient is not a Provider, Plan, or Person)" should be used.
 - 3.3 **Valid Authorization.** Whether an Individual or Authorized Representative uses North Sound BH-ASO's form or a separate authorization, North Sound BH-ASO, through its Privacy Officer, will verify the validity of the authorization by confirming:
 - 3.3.1 The authorization is **filled out** completely;
 - 3.3.2 The authorization is in **plain language**;
 - 3.3.3 The authorization is **signed** by the Individual or Authorized Representative and **dated**. North Sound BH-ASO should verify the Individual has capacity to sign on behalf of the

Individual and/or the Authorized Representative has authority to sign on behalf of the Individual. See Policy 2502.00: Definitions for Policies Governing PHI;

- 3.3.4 The **expiration** date or event triggering expiration has not passed;
- 3.3.5 North Sound BH-ASO has **no** reason to believe the authorization has been revoked;
- 3.3.6 North Sound BH-ASO does not know or through reasonable diligence could know, the authorization to be materially false;
- 3.3.7 The authorization is **not a compound authorization**, meaning the authorization is not combined with other types of documents, unless an exception applies. Generally, an authorization may be combined with another authorization but not, for example, with a waiver. See Section 4.7 of this policy;
- 3.3.8 The authorization contains all the **mandatory core elements**, which are:
 - (a) Name of Individual: Name of the Individual who is the subject of the PHI.
 - (b) Description of PHI: A description of the information to be Used or Disclosed that identifies the PHI in a specific and meaningful manner. See Section 4.4 of this policy for the description of Part 2 Information. See Section 4.5 of this policy for the description of Sexually Transmitted Disease (STD) information.
 - (c) Person Making the Use or Disclosure of the PHI (e.g., Disclosing Entity): The name or general description of the person, entity or program that is authorized by the authorization to make the requested Use or Disclosure (e.g., North Sound BH-ASO should be named if it is Disclosing PHI).
 - (d) Recipient: The name or other specific identification of the persons to whom the Disclosure is to be made.
 - (i) For **PHI that is not Part 2 Information**. North Sound BH-ASO prefers the use of the name of the person, entity or organization that is to receive the PHI; however, a general identification of the class of persons, entities or organizations who is to receive the PHI may be identified. For example, a general designation such as “all the Individual’s treating providers” or “the Individual’s current and future treating providers” is permitted.
 - (ii) There are special rules with respect to authorizations for Disclosures of **Part 2 Information**. For an authorization related to Part 2 Information, recipients (e.g., the person, entity or organization that will receive the Part 2 Information) must be more specifically identified:
 - For treating Health Care Providers, the name of the treating entity (such as the name of the hospital, clinic or practice).
 - For Health Plans that are third-party payors, the name of the Health Plan/third-party payor.
 - For natural persons, the name of the person.
 - For recipients that are central registries or withdrawal management or maintenance treatment programs not more than 200 miles from the Part 2 Program, the name and address of each central registry and each known withdrawal management or maintenance treatment program, but no need to individually name all the programs.
 - For other recipients that are not Health Care Providers, Health Plans/third-party payors or natural persons, such as a health

information exchange, a Research institution or an accountable care organization, the name of the entity and: (i) the name of one or more individual participants; (ii) the name of a participant that is a treating Health Care Provider entity; or (iii) a general designation of a participant that is a natural person or entity (or class of participants) that is a treating Health Care Provider.

- (e) Purpose: A description of each purpose of the Use or Disclosure and any limitations on the authorized Use or Disclosure.
- (f) Expiration: An expiration date or triggering expiration event that relates to the Individual or the purpose of the Use or Disclosure. The expiration date or event should not be longer than reasonably necessary to serve the purpose of the authorization. Any authorization that permits Disclosure of PHI to a financial institution or an employer of the Individual must expire within one (1) year.
- (g) Date of Authorization. The date on which the authorization is signed.
- (h) Signature: The signature of: (i) the Individual who is the subject of the requested PHI; or (ii) the Individual's Authorized Representative along with a description of the Authorized Representative's authority to act for the Individual.

3.3.9 The authorization contains all the **required statements**, which are:

- (a) Right to Revocation: A statement concerning the right to revoke the authorization at any time to the extent an action has not already been taken in reliance on the authorization.
- (b) Right to Refuse Authorization: A statement as to whether the ability to receive Treatment, Payment for services and enrollment or eligibility for benefits is conditioned on signing the authorizations. Generally, the authorization may not be conditioned except in limited circumstances.
- (c) Potential for Redisclosure: A statement informing the Individual of the potential for the information that was Disclosed under the authorization to be subject to redisclosure by the recipient of the information. This statement may include a provision explaining that Part 2 Information and STD information continues to be protected by federal and state law.
- (d) General Designation of Participants of the Recipient List: When a recipient is not a Health Care Provider, Health Plan or natural person, such as a health information exchange, a Research institution, or an accountable care organization and a general designation is used to describe the **Part 2 Information** that will go to treating Health Care Providers, a statement confirming that, upon request, the Individual must be provided a list of persons, entities and organizations to which PHI has been Disclosed pursuant to the general designation. This statement needs to be included only when applicable.

3.4 **Submission of Authorization.** The requestor must submit the authorization to the Privacy Officer. Workforce shall direct any authorization for Disclosure of PHI to the Privacy Officer.

4. **Special Authorization Situations.**

- 4.1 **Psychotherapy Notes.** An authorization is required for any Use or Disclosure of Psychotherapy Notes, which are personal notes of a mental health professional maintained outside of the medical record. In contrast, Mental Health Information is maintained as part of the medical record. Psychotherapy Notes may be Used or Disclosed without an authorization under the following circumstances:
- 4.1.1 For Use by the originator of the notes for Treatment;
 - 4.1.2 For Use or Disclosure by North Sound BH-ASO to defend itself in a legal action or other proceeding brought by the Individual or Individual's Authorized Representative;
 - 4.1.3 As required if the Department of Health and Human Services requires Disclosure to determine compliance with HIPAA;
 - 4.1.4 As otherwise Required by Law; or
 - 4.1.5 In a health oversight activity concerning the originator of the notes.
- 4.2 **Marketing.** An authorization is required for any Use or Disclosure of PHI for Marketing, except in a face-to-face meeting with the Individual or related to the provision of promotional gifts of nominal value provided to the Individual by North Sound BH-ASO. The authorization must specify the North Sound BH-ASO will Use or Disclose PHI for Marketing purposes. Workforce members will comply with the requirements set forth in Policy 2508.00: Marketing.
- 4.3 **Sale of PHI.** An authorization is required for any Sale of PHI that does not meet an exception. If North Sound BH-ASO is to receive remuneration for PHI, then the authorization must specify that North Sound BH-ASO will receive remuneration in exchange for the PHI. See Policy 2523.00: Sale of PHI.
- 4.4 **Part 2 Information.** There are special rules with respect to authorizations for Disclosures of Part 2 Information. For an authorization related to Part 2 Information:
- 4.4.1 The Part 2 Information must be specifically identified. A general description of the information, such as "all medical records," is not sufficient to Disclose Part 2 Information.
 - 4.4.2 Recipients must be more specifically identified. See Section 3.3.8(d)(ii) of this policy.
 - 4.4.3 A notice must accompany the Disclosure of all Part 2 Information. See Section 6.5 of this policy.
- 4.5 **STD Information.** For an authorization related to STD information:
- 4.5.1 The STD information must be specifically identified. A general description of the information, such as "all medical records," is not sufficient to Disclose STD information.
 - 4.5.2 A notice must accompany the Disclosure of all STD information. See Section 6.6 of this policy.
- 4.6 **Research.** Authorizations for Research purposes may have special characteristics and requirements. See Policy 2513.00: Research.
- 4.7 **Combined Authorizations.** An authorization to Use or Disclose PHI may be combined with any other authorization to Use or Disclose PHI, as long as none of the authorizations condition

Treatment, Payment, enrollment in a Health Plan or eligibility for benefits on the authorization (unless otherwise permitted by HIPAA).

5. **Processing an Authorization.**

- 5.1 **Responsibility.** The Privacy Officer is responsible for processing an authorization.
- 5.2 **Verification of Identity and Authority.** The Privacy Officer will verify the person who signed the authorization is the Individual or the Authorized Representative properly acting on behalf of the Individual and the authorization is complete and valid. The Privacy Officer may consult with any Workforce members who are referenced in the authorization. See Policy 2524.00: Verification of Identity and Authority.
- 5.3 **Determination of Validity.** The Privacy Officer will verify that the authorization is valid. See Section 3 of this policy.
- 5.4 **Documentation.** The Privacy Officer will have the authorization and North Sound BH-ASO's responses to the authorization appropriately logged and documented.

6. **Complying with the Authorization.**

- 6.1 **Compliance.** North Sound BH-ASO will comply with a valid authorization, subject to any exceptions.
- 6.2 **Verbal Disclosure.** If an authorization requesting verbal information is granted, then the appropriate Workforce member shall be identified to make the verbal Disclosure. Verbal Disclosure of STD information must be accompanied by a written notice at the time or within ten (10) days of the Disclosure. A copy of this notice shall be included in Individual's record. See Section 6.7 of this policy.
- 6.3 **Written Summary Disclosure.** If an authorization requesting written summary Disclosure (for example, a provider summary) is granted, then the Privacy Officer shall identify an appropriate Workforce member to create the written summary.
- 6.4 **Copies of Documents.**
 - 6.4.1 If an authorization requests copies of PHI, then the Privacy Officer will be responsible for gathering, copying and sending the PHI as directed in the authorization.
 - 6.4.2 Disclosures of Part 2 Information must be accompanied by the notice described in Section 6.5 of this policy and Disclosures of STD information should be accompanied by the notice described in Section 6.6 of this policy.
 - 6.4.3 Workforce should avoid transmitting unencrypted PHI over the Internet. North Sound BH-ASO may send unencrypted PHI over the Internet only after first apprising the Individual of the risks of this mode of transmission and documenting the Individual's preference for this transmission.
- 6.5 **Notice that Must Accompany a Disclosure of Part 2 Information.** Any Disclosure in reliance on an authorization of PHI containing Part 2 Information, which generally relates to SUD information, must include one of the following written notices:

Notice

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2). The federal rules prohibit you from making

any further disclosure of information that identifies the individual as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any abuse patient with an substance use disorder, except as provided at §§2.12(c)(5) and 2.65.

OR

Notice

42 CFR Part 2 prohibits unauthorized disclosure of these records.

- 6.6 **Notice that Must Accompany STD Information.** Any Disclosure in reliance on an authorization of PHI containing STD information must include the following written notice:

Notice

This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization of the person to whom it pertains or as otherwise permitted by state or federal law. A general authorization for the release of medical or other information is not sufficient for this purpose.

North Sound BH-ASO may give this notice verbally, as long as, then North Sound BH-ASO provides a written notice within ten (10) days.

- 6.7 **Copy to the Individual.** If North Sound BH-ASO sought the authorization from the Individual (or the Authorized Representative), then North Sound BH-ASO must provide the Individual (or the Authorized Representative) with a copy of the signed authorization.
- 6.8 **Notification of Fees.** The Privacy Officer shall inform the requestor of the amount to be charged to the requestor prior to complying with the authorization or as part of the notification of compliance with the authorization. North Sound BH-ASO may charge no more than the fees identified in Section 8 of this policy.

7. **Denial or Limitation on Authorization.**

- 7.1 **Full Denial.** When making the determination that an authorization is invalid or an authorization otherwise should be denied or limited, the Privacy Officer should send a letter to or otherwise contact the requestor explaining the denial and the reasons for the denial of the authorization.
- 7.2 **Limited Compliance.** When limited compliance is granted, the Privacy Officer should: (a) follow Section 6 of this policy, in applicable part, for complying with an authorization; (b) follow Section 7.1 of this policy, in applicable part, for denying an authorization; and (c) inform the requestor of the limited compliance.

8. **Fees.** North Sound BH-ASO may charge the maximum per page amount recognized by the State Law. The amount charged for Disclosures of PHI under an authorization may differ from the amount charged for access to PHI under an Individual's right of access. See Policy 2514.00: Right of Access to PHI.
9. **Revocation of Authorization.** An Individual may revoke an authorization at any time, except in limited circumstances. North Sound BH-ASO will not act upon an authorization it knows has been revoked, but a revocation will not be effective for an action taken in reliance on the authorization prior to the revocation.
 - 9.1 **Written Revocation.** Except as provided in Section 9.2 below, any request for revocation of authorization must be in writing and signed by the Individual or the Authorized Representative and submitted to the Privacy Officer or responsible Workforce member.
 - 9.2 **Verbal Revocation Permitted for Part 2 Information.** Verbal revocation by the Individual or Authorized Representative of an authorization related to Part 2 Information will be treated as a revocation at the time of the statement. The Privacy Officer or responsible Workforce member shall document the revocation and notify any necessary Workforce members. North Sound BH-ASO may require written confirmation by the Individual or Authorized Representative of the revocation at a later time.
11. **Documentation.** Documentation with respect to authorizations will be retained for at least six (6) years. Retention requirements include:
 - 11.1 **Authorization policies and procedures.**
 - 11.2 **Authorizations, responses to authorizations and related documentation.**
12. **Related Policies.** Other policies and procedures to review that are related to this policy:
 - 12.1 **Policy 2501.00: Privacy and Confidentiality of PHI.**
 - 12.2 **Policy 2502.00: Definitions for Policies Governing PHI.**
 - 12.3 **Policy 2508.00: Marketing.**
 - 12.4 **Policy 2513.00: Research.**
 - 12.5 **Policy 2514.00: Right to Access PHI.**
 - 12.6 **Policy 2522.00: Uses and Disclosures of PHI.**
 - 12.7 **Policy 2523.00: Sale of PHI.**
 - 12.8 **Policy 2524.00: Verification of Identity and Authority.**

ATTACHMENTS

None